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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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CALIFORNIA PUBLIC RECORDS RESEARCH,  
INC.,

Plaintiff and Appellant,

v.

COUNTY OF SACRAMENTO et al.,

Defendants and Respondents.

C079239

(Super. Ct. No. 34-2011-  
80001008CUWMGDS)

Petitioner and appellant California Public Records Research, Inc. (CPRR) filed a petition for writ of mandate challenging fees charged for copies of official records by the Sacramento County Clerk Recorder's Office. The petition alleges that respondents Sacramento County and County Clerk/Recorder Craig A. Kramer (collectively, County) failed to perform a mandatory duty to limit copy fees, in violation of Government Code

section 27366 and article XIII C of the California Constitution (Proposition 26).<sup>1</sup> The petition further alleges that the Board of Supervisors (Board) abused its discretion in setting copy fees. The petition seeks a declaration of the parties' rights under section 27366.

Following a bifurcated bench trial, the trial court denied CPRR's petition and rejected its request for declaratory relief. The trial court determined that section 27366, which authorizes the Board to set fees "in an amount necessary to recover the direct and indirect costs of providing the product or service," imposes a discretionary obligation to set fees, rather than a ministerial one. The trial court further determined that section 27366 authorizes the Board to consider overhead and other operating costs not specifically associated with the production of copies in setting fees. The trial court further found that the Board did not abuse its discretion in setting fees at the rate of \$12.00 for the first page, and \$2.00 for each subsequent page (\$12.00/\$2.00). Accordingly, the trial court rejected the petition and request for declaratory relief and entered judgment in the County's favor.

CPRR appeals, challenging the trial court's interpretation of section 27366 and insisting the Board abused its discretion in setting copy fees. CPRR also contends the trial court improperly reconsidered and reversed an earlier order narrowly construing section 27366, thereby exceeding its jurisdiction. We have reviewed the record and conclude that the trial court's ultimate interpretation of section 27366 was correct. We also agree with the trial court that CPRR failed to show the Board abused its discretion in setting the challenged fees. Accordingly, we shall affirm the judgment.<sup>2</sup>

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<sup>1</sup> Undesignated statutory references are to the Government Code.

<sup>2</sup> This case presents many of the same issues as another case decided this date, *California Public Records Research, Inc. v. County of Yolo*, (Oct. 14, 2016, C078158) \_\_\_ Cal.App.4th \_\_\_ (*CPRR v. Yolo*). We refer the reader to our opinion in that case for a

## I. BACKGROUND

CPRR is a California corporation “engaged in the business, inter alia, of locating and retrieving public records and has, in the course of its business, located and obtained copies of public records throughout the State of California including records maintained by [the County.]” (Italics omitted.) According to the petition, CPRR “has lobbied for wider access by the public to public records and otherwise sought to promote the interests of the general public regarding access to public information and the fees charged therefor.”

The Recorder’s Office processes and maintains the County’s public records, including real property records (e.g., deeds, deeds of trust, liens, and maps), vital records (e.g., marriage, birth, and death certificates), and other official records (e.g., professional registrations). The Recorder’s Office “is tasked with preserving and providing for the public a true and reliable, readily accessible permanent account of real property and other official records and vital human events, both historic and current.”

The Recorder’s Office maintains approximately 300 different kinds of public records. Members of the public may obtain copies of these records for a fee. From 1951 through 1992, former section 27366 established a statutory copy fee of \$1.00 for the first page and \$0.50 for each subsequent page. (Former § 27366.)<sup>3</sup> In 1993, the Legislature amended section 27366, repealing the statutory copy fee and requiring boards of

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more detailed analysis of the phrase “direct and indirect costs” as used in section 27366. (*CPRR v. Yolo, supra*, at [pp. 14-28].)

<sup>3</sup> Former section 27366 provided, “The fee for any copy of any other record or paper on file in the office of the recorder, when the copy is made by the recorder, is one dollar (\$1) for the first page and fifty cents (\$0.50) for each additional page or portion thereof; provided, that page does not exceed 11 by 18 inches. The fee for photographic copies of pages exceeding 11 by 18 inches shall be one dollar and fifty cents (\$1.50) for the first page and 80 cents (\$0.80) for each additional page or portion thereof.”

supervisors to set fees “in an amount necessary to recover the direct and indirect costs of providing the product or service or the cost of enforcing any regulation for which the fee or charge is levied.” (§ 27366.) As we shall discuss, the present dispute turns on the meaning of the phrase “direct and indirect costs.”

A. *The Fee Study*

The Recorder’s Office conducted a fee study in 2009. The fee study proposes a fee schedule for all services offered by the Recorder’s Office, including copy services, using a billing rate of \$121.05 per hour, or \$2.02 per minute. The fee study calculates fees by multiplying the billing rate by the average time required to perform a given service. For example, the fee study indicates that copy requests require an average of six minutes of staff time for the first page, and one minute for each subsequent page.<sup>4</sup> Applying the billing rate of \$2.02 per minute, the fee study recommends that copy fees be \$12.00 for the first page (\$2.02 per minute multiplied by 6 minutes equals \$12.12, rounded to the nearest dollar) and \$2.00 for each subsequent page (\$2.02 per minute multiplied by one minute, rounded to the nearest dollar).

The billing rate was calculated by aggregating costs associated with offering services to the public. These costs fall into four broad categories: (1) the “productive

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<sup>4</sup> The fee study indicates that copy requests typically involve several steps, each of which demands staff time. When a member of the public goes to the Recorder’s Office to obtain a copy of an official record, a staff member greets her and determines what kind of document she needs. This process consumes an average of one minute of staff time. The staff member then helps the member of the public to locate the document, a process that consumes an average of three minutes of staff time. The staff member then prepares the copy and processes payment, processes which consume an additional two minutes of staff time. The fee study indicates that subsequent pages require an additional minute per page to prepare. Thus, the fee study concludes that copy requests consume an average of six minutes of staff time for the first page, and an additional one minute of staff time for each subsequent page.

hourly rate,” which consists of the average salary and benefits of the staff member assigned to make copies; (2) “Department Indirect Costs,” which consist of a pro rata share of the total indirect costs of the Recorder’s Office, including the staff salaries of eleven supervisory and administrative employees, services and supplies, equipment maintenance, and other overhead and operating costs; (3) “Division Direct Costs,” which consist of a pro rata share of the salary of the chief deputy responsible for supervising the customer service division of the Recorder’s Office; and (4) “Section Direct Costs,” which consist of a pro rata share of the direct costs required to operate the public services section of the Recorder’s Office (the section responsible for handling copy requests), including microfilm services and supplies, data processing services, systems development services, mail and postage charges, county facility use charges, and portions of the salaries of three supervisors. For each of the foregoing categories, an hourly rate was calculated using a concept known as the “productive hour.”

According to the County, “Productive hours are an employee’s total annual hours (40 hours a week [multiplied by] 52 weeks a year), less vacation, sick leave, holidays, and breaks.” The fee study indicates that employees at the Recorder’s Office log an average of 1,624 productive hours a year. The staff member most likely to be tasked with making copies is called an office specialist. An office specialist earns an average annual salary of \$65,052.92, with benefits. Thus, the personnel costs associated with making copies for members of the public amount to \$40.06 per productive hour ( $\$65,052.92$  divided by 1,624 equals \$40.06). The fee study uses a similar methodology to calculate a cost per productive hour for each of the other categories of costs incurred by the Recorder’s Office (e.g., department indirect costs, division direct costs), which are then aggregated to arrive at the billing rate. These calculations are summarized below:

	COST PER HOUR
1. Productive hourly rate (based on the average salary, with benefits, of the office specialist assigned to make copies)	\$40.06
2. Department indirect costs (including staff salaries of eleven supervisory and administrative employees, services and supplies, equipment maintenance, and other overhead and operating costs)	\$51.26
3. Division direct costs (based on the salary of the chief deputy responsible for supervising the customer service division)	\$2.77
4. Section direct costs (including microfilm services and supplies, data processing services, systems development services, mail and postage charges, county facility use charges, and portions of the salaries of three supervisors)	\$26.97
<b>Total</b>	<b>\$121.05</b>

As the table illustrates, the billing rate captures *all* of the costs involved in providing services to the public, both direct and indirect.<sup>5</sup> Because the billing rate reflects direct and indirect costs, and because the billing rate was used to calculate proposed copy fees, the proposed copy fees also reflect the direct and indirect costs of providing copies to the public. Put another way, the fee study proposes copy fees that not only recoup the direct cost of making copies (such as the cost of running the copy machine), they also recoup a share of the indirect costs incurred in the day-to-day operation of the Recorder’s Office, such as staff salaries and overhead.

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<sup>5</sup> We consider the meaning of these terms below.

*B. The Ordinance*

The fee study was reviewed and approved by Patricia Marion, a Senior Accountant with the Department of Finance, Auditor-Controller's Division of Sacramento County. The proposed copy fees were then presented to the Board as part of a package of fee adjustments sought by the Recorder's Office and Department of Finance.

The Board considered the proposed fee adjustments at their May 27, 2009, meeting. In anticipation of the meeting, the Internal Services Agency prepared a six-page memorandum entitled "Annual User Fees Update for Departments In The Internal Services Agency" (update).

The update generally describes fees charged by the Recorder's Office but does not specifically discuss copy fees. The update explains: "The Auditor-Controller has reviewed the proposed fee increases and concurs with the methodology used in calculating the cost of services."

The update recommends that the Board adopt a proposed ordinance amending the Sacramento Municipal Code to set the fees charged for more than two dozen different services offered by the Recorder's Office, including copy services. The update attaches a redlined or "strikethrough" copy of the proposed ordinance, reflecting current and proposed fees for copy services.

The update also attaches a three page memorandum from the Recorder's Office. The memorandum recommends that the Board adopt the proposed ordinance, stating: "The Board's approval of the recommended fee revisions will allow the [Recorder's Office] to recover actual costs for services." The memorandum concludes: "The Auditor-Controller Division of the Department of Finance has reviewed the proposed fees and approved the methodology used to determine that the fees appropriately include indirect cost rates and fully capture actual costs."

The memorandum attaches a chart entitled “ANALYSIS OF FEE ADJUSTMENTS FOR FY 09/10,” which reflects current and proposed fees for services offered by the Recorder’s Office. The chart indicates that many of the proposed fees, including the proposed copy fees, are the same as the old fees. The memorandum also attaches a chart entitled “County Comparison,” which reflects the fees charged for copies and other services by other recorders’ offices throughout the State of California. According to the chart, the average copy fee for official records, for all counties except Sacramento, is \$2.75 for the first page and \$1.03 for each subsequent page.

The Board adopted the proposed ordinance on June 2, 2009, thereby setting the copy fees charged by the Recorder’s Office at the challenged rate of \$12.00/\$2.00. The Board does not appear to have been provided with a copy of the fee study.

*C. CPRR Buys Copies and Brings Suit*

CPRR purchased copies of two recorded documents from the Recorder’s Office on July 8, 2011. One of the documents was two pages long and one was 21 pages. The Recorder’s Office charged CPRR \$62.00.

CPRR commenced the instant action on November 22, 2011. CPRR’s verified third amended petition for writ of mandate and declaratory relief, which is the operative pleading, asserts eight causes of action, four of which remain at issue in this appeal. First, CPRR seeks a writ of mandate on the ground that the County violated a mandatory duty to limit copy fees. Specifically, CPRR alleges the County violated a “statutory duty to demand and collect copy fees in amounts that do not exceed the recoupable direct and indirect costs of providing copies permitted by law.” Second, CPRR seeks a writ of mandate on the ground that the County violated Proposition 26. Specifically, CPRR alleges the County violated a mandatory duty to submit the challenged fees to the electorate for approval as a special tax under Proposition 26. Third, CPRR seeks a writ

of mandate on the ground that the Board abused its discretion in setting copy fees.

Fourth, CPRR seeks a declaration of the parties' rights under section 27366.<sup>6</sup>

*D. Phase One: Judge Sumner's Order*

At the parties' request, the trial court bifurcated the case into two phases. By stipulation, the first phase of the trial addressed the threshold issue of "the nature and kind of direct and indirect costs which may be recouped in the fees for copies of documents on file with the . . . Recorder, pursuant to . . . section 27366."

On December 5, 2013, the trial court (Sumner, J.) entered an "order on motion for declaration re recoupable costs." In the order, the trial court observed that the meaning of the term "direct costs" was essentially undisputed, having been defined in an analogous case, *North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144 (*North County*).<sup>7</sup> The trial court therefore adopted the County's proposed definition of "direct costs," defining the term to include the cost of running the copy machine (including the cost of paper and toner, the cost of the copy machine, and the cost of operating and maintaining the copy machine), and the salary and benefits of the person making the copies.

The trial court next considered the meaning of the term "indirect costs." After considering various definitions of "indirect costs," the trial court determined that the term was ambiguous and should be narrowly construed pursuant to article I, section 3, subdivision (b)(2) of the California Constitution. Relying on *North County*, the trial court defined the term "indirect costs" to mean "ancillary costs" or "costs necessarily associated with the retrieval, inspection, redaction and handling of the document from

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<sup>6</sup> CPRR originally sought an additional declaration that the Recorder's direct and indirect costs to produce copies do not exceed \$0.10 per page. CPRR abandons this contention on appeal.

<sup>7</sup> We discuss *North County* at greater length *post*.

which the copy is extracted.” The trial court found that the term “indirect costs” does not include overhead and other operating costs not specifically associated with the production of copies. Armed with these definitions, the parties proceeded with discovery and prepared for the second and final phase of the trial.

*E. Phase Two: The Parties’ Arguments and Evidentiary Submissions*

The second phase of the trial was set for January 9, 2015. In anticipation of the scheduled trial date, the parties submitted briefs, declarations and documentary evidence addressing the validity of the Recorder’s copy fees under section 27366.

CPRR’s moving papers focused on measuring the Recorder’s copy fees against the yardstick set forth in the trial court’s phase one order. To this end, CPRR offered evidence regarding the cost of paper and toner, the cost of purchasing and maintaining a copy machine, and the average salary and benefits of the office specialist responsible for operating the copy machine. Extrapolating from this evidence, CPRR argued that the Recorder’s direct and indirect costs, as defined in the trial court’s phase one order, amount to \$0.32 per page.

The County’s opposition took a somewhat different tack. Rather than rebut CPRR’s calculations, the County offered a detailed explanation of the fee study. The County submitted a declaration from Piper Wilson, an Administrative Manager with the Recorder’s Office. Wilson’s declaration attaches a copy of the fee study and describes the methodology used to calculate direct and indirect costs. The County also submitted a declaration from Marion, an accountant with approximately thirty-five years of experience, including twenty-five years as a Senior Accountant with the Department of Finance. As noted, Marion reviewed and approved the fee study. Marion’s declaration offers excerpts from federal and state accounting guidelines (which we shall discuss shortly), and opines that “the ‘productive rate’ or ‘billing rate’ methodology used in the [fee study] . . . [is] a sound and appropriate accounting methodology commonly used in

accounting practice to allocate a pro rata share of direct and indirect costs to a specific product or service.” According to Marion, “The terms ‘direct costs’ and ‘indirect costs’ are generally common terms that are often employed in the business and accounting professions and known to me in my job duties which require me to be familiar with the budget of the [Recorder’s Office].”

*F. Phase Two: Reassignment and Reconsideration*

On December 17, 2014, the case was reassigned for all purposes to Judge Krueger. Judge Sumner, who presided over the first phase of the bifurcated trial, was assigned to a criminal master calendar department.

On January 8, 2015, the day before the phase two trial date, the trial court (Krueger, J.) ordered the parties to appear, directing their attention to *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1106-1108 (*Le Francois*) [trial court possesses inherent authority to reconsider its own interim orders prior to entry of final judgment], *Farmers Ins. Exchange v. Superior Court* (2013) 218 Cal.App.4th 96, 106, fn. 17 [same], and *In re Marriage of Fernandez-Abin & Sanchez* (2011) 191 Cal.App.4th 1015, 1043-1044 [same].

The parties appeared as directed. After hearing argument, the trial court took the matter under submission.

Approximately two weeks later, on January 26, 2015, the trial court entered an order vacating the submission pursuant to rule 2.900(b) of the California Rules of Court. The order explained: “Having reviewed the phase two papers, and with the benefit of hindsight, the court concludes that bifurcating this case into two phases was not helpful to its ultimate resolution. It is easy to understand why the parties wanted this matter bifurcated: a definition of the relevant terms would usually tend to give the parties assistance in focusing their evidentiary submissions. In this particular case, however, bifurcation led the court to attempt to define a term—*indirect costs*—without considering evidence of how government agencies, including Sacramento County, and others,

including accountants, may have historically applied the term. These considerations are relevant to a statutory analysis.” Accordingly, the trial court continued, “the court believes this is an appropriate case to exercise its authority to reconsider the phase one interim order.”

Following the procedure set forth in *Le Francois*, the trial court informed the parties that the court was contemplating reconsideration of the phase one order, offered them an opportunity to submit additional briefing, and invited them to contact the clerk to obtain a new hearing date. (*Le Francois, supra*, 35 Cal.4th at p. 1108 [“To be fair to the parties, if the court is seriously concerned that one of its prior interim rulings might have been erroneous, and thus that it might want to reconsider that ruling on its own motion[,] . . . it should inform the parties of this concern, solicit briefing, and hold a hearing”].)

CPRR objected to reconsideration of the phase one order; however, neither party submitted additional briefing or requested a new hearing.

*G. Phase Two: Judge Krueger’s Ruling*

On February 19, 2015, the trial court (Krueger, J.) issued a tentative ruling denying the petition and rejecting the request for declaratory relief. The tentative ruling begins by stating the applicable standard of review, noting that the Recorder’s copy fees “must be reviewed under the deferential abuse of discretion standard, and must be upheld unless CPRR establishes that the County acted arbitrarily, capriciously, or entirely without evidentiary support.”

The tentative ruling then considers the trial court’s authority to reconsider the phase one order. The tentative ruling acknowledges the “ ‘general rule that one trial court judge may not reconsider and overrule an interim ruling of another judge’ ” (citing *Morite of California v. Superior Court* (1993) 19 Cal.App.4th 485, 493 (*Morite*)), but notes that our Supreme Court expressly left open the question of “ ‘when and under what circumstances one judge may revisit a ruling of another judge’ ” (citing *Le Francois, supra*, 35 Cal.4th at p. 1097, fn. 2.). Assuming for the sake of argument that the general

rule still holds, the tentative ruling notes that an “established exception” applies when the judge who made the initial ruling is unavailable. (See *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1232 (*Ziller*)). Relying on *Ziller*, the tentative ruling opines, “[t]he reassignment of this case effectively rendered Judge Sumner unavailable.” Therefore, the tentative ruling concludes that the unavailability exception applies, giving the trial court authority to reconsider the phase one order.

Next, the tentative ruling considers whether the County abused its discretion in setting the challenged fees. After reviewing the evidence described above, the tentative ruling concludes: “Having reviewed the County’s detailed description of how it calculated the total billing rate, the court cannot say that it abused its discretion.” The tentative ruling acknowledges that the total billing rate includes indirect costs that were expressly excluded by the phase one order. Nevertheless, the tentative ruling concludes that the trial court’s initial interpretation of section 27366 was “unduly restrictive and bears little resemblance to the ordinary and usual meaning of the relevant terms.” The tentative ruling surveys various definitions of the terms “direct costs” and “indirect costs” and concludes that “*all* of the costs that the County has included in its total billing rate are the types of costs that fall within the usual and ordinary meaning of the terms direct and indirect costs.” The tentative ruling therefore concludes that “the County did not abuse its discretion in calculating the total billing rate.” No party contested the tentative ruling, which became the trial court’s final order and statement of decision.

CPRR filed a timely notice of appeal.

## **II. DISCUSSION**

### *A. Reconsideration of Phase I Order*

CPRR contends the trial court erred in reconsidering and reversing the phase one order. We conclude any error was harmless.

Code of Civil Procedure section 1008 governs parties’ motions for reconsideration and their renewal of prior motions. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 685.)

Code of Civil Procedure section 1008, subdivision (a) provides that such motions must be made within 10 days of service of notice of entry of the order and must be based “upon new or different facts, circumstances, or law.” Code of Civil Procedure section 1008, subdivision (e) limits the trial court’s jurisdiction “with regard to applications for reconsideration of its orders and renewals of previous motions and applies to all applications to reconsider any order of a judge or court.” Code of Civil Procedure section 1008 is the exclusive means by which a party may seek reconsideration of a prior order. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1499.)

In *Le Francois*, our Supreme Court considered whether a trial court may “reconsider interim orders it has already made in the absence of new facts or new law.” (*Le Francois, supra*, 35 Cal.4th at p. 1101.) In that case, the defendants brought a motion for summary judgment which was denied by a first judge. (*Id.* at p. 1097.) A year later, the defendants brought a renewed motion for summary judgment on the same grounds. (*Ibid.*) The second motion was originally scheduled to be heard by the first judge, but was transferred without objection to a second judge, who granted the renewed motion and entered judgment in the defendants’ favor. (*Ibid.*)

Our Supreme Court reversed on the ground that the defendants did not meet the statutory requirements for a motion for reconsideration. (*Le Francois, supra*, 35 Cal.4th at p. 1109.) However, the court interpreted Code of Civil Procedure section 1008 “as imposing a limitation on the parties’ ability to file repetitive motions, but not on the court’s authority to reconsider its prior interim rulings on its own motion.” (*Le Francois, supra*, at p. 1105.) Thus, the court concluded, if the statutory requirements under Code of Civil Procedure section 1008 are not met, “any action to reconsider a prior interim order must formally begin with the court *on its own motion*.” (*Le Francois, supra*, at p. 1108.)

At first blush, *Le Francois* would appear to authorize Judge Krueger’s sua sponte reconsideration of Judge Sumner’s phase one order. However, our Supreme Court expressly reserved the question whether one trial judge may reverse the ruling of another

trial judge. (*Le Francois, supra*, 35 Cal.4th at p. 1097, fn. 2 [“The Court of Appeal held that because the motion was transferred without objection, plaintiffs could not challenge the propriety of that transfer on appeal. This issue is not before us on review, and we express no opinion on when and under what circumstances one judge may revisit a ruling of another judge”].) Consequently, as Judge Krueger recognized, the law is unclear as to whether one trial judge may reverse the ruling of another trial judge.

CPRR argues that *Le Francois* does not change the general rule that one trial judge may not reconsider and overrule an interim ruling of another trial judge. (See *Morite, supra*, 19 Cal.App.4th at p. 493; *Ziller, supra*, 206 Cal.App.3d at p. 1232.) The County counters that, assuming the general rule applies, it is subject to an exception where the first trial judge becomes unavailable. (*Ziller, supra*, 206 Cal.App.3d at p. 1232 [“An established exception to the general rule limiting reconsideration is that where the judge who made the initial ruling is unavailable to reconsider the motion, a different judge may entertain the reconsideration motion”].) CPRR responds that the exception does not apply because Judge Sumner was not unavailable, but “was sitting down the hall,” albeit in a criminal master calendar department. We need not resolve any of these arguments because, even assuming error, CPRR fails to demonstrate prejudice.

Another panel of this court considered a similar claim of error in *People v. Edward D. Jones & Co.* (2007) 154 Cal.App.4th 627, 634 (*Jones*). There, the People of the State of California sued a brokerage firm for failing to disclose certain “shelf-space” agreements to investors and potential investors. (*Id.* at pp. 629-630.) The firm demurred to the People’s complaint on federal preemption grounds. (*Id.* at p. 631.) The trial court overruled the demurrer. (*Ibid.*) A year later, the firm moved for judgment on the pleadings on the same federal preemption grounds. (*Id.* at p. 632.) A second trial judge granted the motion, despite the firm’s inability to show that there had been “a material change in applicable case law or statute since the ruling on the demurrer,” as required by Code of Civil Procedure section 438, subdivision (g)(1). (*Jones, supra*, at p. 633 & fn.

5.) The People appealed, arguing that the second trial judge improperly reversed the order overruling the firm’s demurrer, in violation of the “ ‘general rule [that] one trial judge cannot reconsider and overrule an order of another trial judge.’ [Citation.]” (*Id.* at p. 633.)

Relying on the constitutional doctrine of reversible error (Cal. Const., art. VI, § 13), the court declined to reach the procedural issue because, even assuming the second trial judge erred in granting the motion for judgment on the pleadings, “that error cannot be deemed reversible without reaching the merits of the preemption issue.” (*Jones, supra*, 154 Cal.App.4th at p. 634.) “Under the constitutional principle of reversible error set forth in section 13 of article VI of the California Constitution,” the court explained, “we cannot reverse a judgment based on a procedural error unless there has been a miscarriage of justice, and here we cannot determine whether there has been a miscarriage of justice without addressing the substantive issue of preemption, since there would be no miscarriage of justice in precluding the People from proceeding with an action that is preempted by federal law.” (*Id.* at p. 636.)

Taking our cue from *Jones*, we conclude that we cannot reverse for a procedural error unless there has been a miscarriage of justice, and we cannot determine whether there has been a miscarriage of justice without addressing the merits of the petition.<sup>8</sup> (*Jones, supra*, 154 Cal.App.4th at p. 636.) We therefore decline CPRR’s invitation to

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<sup>8</sup> Here, as in *Jones*, the parties have had ample opportunity to address the harmless error issue in their briefs. Indeed, the County relies on *Jones* to argue that Judge Krueger’s ruling was substantively correct, and should therefore be affirmed regardless of any procedural error. Although CPRR chose not to respond to the County’s harmless error argument, the parties have fully briefed the substantive issues, which present pure questions of law. Furthermore, the trial court followed the procedure set forth in *Le Francois*, giving the parties an opportunity to submit further briefing on the issues and request a new hearing. On this record, we see no reason why we should not follow the harmless error analysis set forth in *Jones*.

reverse without reaching the merits of the trial court’s phase two ruling. As we shall explain, the trial court’s ultimate interpretation of section 27366 was substantively correct, and therefore, the California Constitution precludes us from reversing for an alleged procedural error, even assuming that any such error was made. (*Jones, supra*, at p. 636; see also *In re Marriage of Barthold* (2008) 158 Cal.App.4th 1301, 1313 [“In our view, the California Constitution requires that in any case in which a trial judge reconsiders an erroneous order, and enters a new order that is substantively correct, the resulting ruling must be affirmed regardless of any procedural error committed along the way”].)

*B. Phase Two Ruling*

*1. Standard of Review*

“A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires.” (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 995, fn. omitted; accord *Shelden v. Marin County Employees’ Retirement Assn.* (2010) 189 Cal.App.4th 458, 463 (*Shelden*).) The court reviews legal questions, including questions of statutory construction, de novo. (See *ibid.*; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798.)

“In reviewing a trial court’s judgment on a petition for writ of mandate, the appellate court is required to exercise independent judgment on legal issues. (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 53.) . . . The interpretation and applicability of statutes is clearly a question of law. (*Sutco Construction Co. v. Modesto High School Dist.* (1989) 208 Cal.App.3d 1220, 1228.)” (*McIntyre v. Sonoma Valley Unified School*

*Dist.* (2012) 206 Cal.App.4th 170, 179.) To the extent that facts are disputed, “ ‘we apply the substantial evidence test to the trial court’s factual findings.’ [Citation.] Thus, foundational matters of fact are conclusive on appeal if supported by substantial evidence. [Citation.]’ [Citation.]” (*American Federation of State, County & Municipal Employees v. Metropolitan Water Dist.* (2005) 126 Cal.App.4th 247, 261.)

Similar standards apply when we consider whether a determination is proper in an action for declaratory relief. (*Carson Citizens for Reform v. Kawagoe* (2009) 178 Cal.App.4th 357, 366.) “ ‘Whether a determination is proper in an action for declaratory relief is a matter within the trial court’s discretion . . . and the court’s decision to grant or deny relief will not be disturbed on appeal unless it be clearly shown . . . that the discretion was abused.’ [Citations.]” (*Application Group v. Hunter Group* (1998) 61 Cal.App.4th 881, 892-893.) “ ‘However, we review questions of law independently. [Citation.] Where, as here, the facts are undisputed and the issue involves statutory interpretation, we exercise our independent judgment and review the matter de novo. [Citation.]’ [Citation.]” (*Carson Citizens for Reform v. Kawagoe, supra*, at p. 366.)

Here, the facts are essentially undisputed, raising questions of law requiring statutory interpretation. Such questions of statutory construction are also reviewed de novo. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311; *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

## 2. Section 27366

We begin with an overview of section 27366 which provides, “The fee for any copy of any other record or paper on file in the office of the recorder, when the copy is made by the recorder, shall be set by the board of supervisors in an amount necessary to recover the direct and indirect costs of providing the product or service or the cost of enforcing any regulation for which the fee or charge is levied.”

We discuss the meaning of section 27366 at length in *CPRR v. Yolo, supra*, \_\_Cal.App.4th. at [pp. 14-28].<sup>9</sup> We do not repeat our entire analysis here. It suffices to say that the parties’ dispute there similarly turned on the meaning of “indirect costs,” a term not defined by statute. (*Id.* at [p. 15].) Following an extensive review of dictionary definitions, accounting literature, and related statutes, we determined that the term “indirect costs” has an established and generally accepted meaning in the context of fee setting legislation, which includes overhead and other operating costs not specifically associated with the production of copies. (*Id.* at [pp. 16-25].) (See, e.g., Black’s Law Dict. (6th ed. 1990) p. 346, col. 2 [defining “indirect costs” as “Costs not readily identifiable with production of specific goods or services, but rather applicable to production activity in general; e.g., overhead allocations for general and administrative activities”]; State Controller’s Off. Manual of Accounting Standards and Procedures for Counties (May 1992) at pp. C.30 and C.38 [defining indirect charges/costs/expenses as “overhead,” which is, in turn, defined as “Those elements of cost necessary in the production of a good or service which are not directly traceable to the product or service”]; Ed. Code § 3338, subd. (b)(2) [defining “indirect costs” as “the agencywide, general management cost of the activities for the direction and control of the agency as a

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<sup>9</sup> The Fifth Appellate District recently considered section 27366 in *California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432 (*Stanislaus*), a case bearing significant similarities with *CPRR v. Yolo* and the case before us. We note one significant factual difference between *Stanislaus* and the present case. There, the county’s fee study considered copy costs on a per document basis, rather than a per page basis. (*Stanislaus, supra*, at p. 1436.) As a result, the court concluded, “there was an apples-versus-oranges-type disconnect between the 2001 study’s application of the time-based methodology to estimate *per document* costs and its recommendation to impose copying fees on a *per page* basis.” (*Id.* at p. 1449.) There is no such “disconnect” on the record before us, as the County’s fee study appropriately considers costs on a per page basis.

whole”].) We therefore concluded that “the plain meaning of section 27366 unambiguously authorizes—indeed, *requires*, the Board to set fees in an amount necessary to recover overhead and other operating costs incurred in the day-to-day operation of the Recorder’s Office.<sup>10</sup> (*CPRR v. Yolo, supra*, at [p. 25].)

Our analysis of section 27366 in *CPRR v. Yolo* resolves most of CPRR’s current contentions regarding the interpretation of the statute. For example, CPRR argues that the trial court improperly relied on dictionary definitions to construe section 27366. We considered and rejected a similar argument in *CPRR v. Yolo*, noting that, “ ‘[t]he dictionary is a proper source to determine the usual and ordinary meaning of words in a statute.’ ” (*CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [p. 16], citing *Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1251; see also *People v. Whitlock* (2003) 113 Cal.App.4th 456, 462 [“To ascertain the common meaning of a word, ‘a court typically looks to dictionaries.’ [Citation.]”].)

In its reply brief, CPRR acknowledges our obligation to give the words of a statute their usual and ordinary meaning (*Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 861), but notes that the rule is subject to an exception where a word has a well-established legal meaning. (See *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 19 [“when a word used in a statute has a well-established *legal* meaning, it will be given that meaning in construing the statute”].) Relying on this exception, CPRR argues that the term “indirect costs” has a legal meaning that is more restrictive than the ordinary meaning of the term. We do not consider arguments made for the first time in a reply brief because the opposing party has no opportunity to respond. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.) But even assuming the argument was timely, we would reject it.

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<sup>10</sup> We respectfully disagree with the Fifth Appellate District’s conclusion that the term “indirect costs” is ambiguous. (*Stanislaus, supra*, 246 Cal.App.4th at p. 1455.)

No authority supports CPRR’s contention that indirect costs has an established legal meaning that differs from its ordinary meaning.<sup>11</sup> To the contrary, as we demonstrated in *CPRR v. Yolo*, the statutory, ordinary and technical definitions of the terms “direct costs” and “indirect costs” are consistent and harmonious. (See *CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 19-21].) We therefore reject CPRR’s untimely attempt to avoid the ordinary meaning of the term “indirect costs.”

In a related challenge, CPRR suggests that the trial court misapplied the rules of statutory construction. According to CPRR, the trial court “failed to consider and apply the standard for interpretation where the legislative intent is not plain and, failing [*sic*] to discuss the statutes, constitutional provisions, and common law which give the phrase meaning.” We perceive no error. As previously discussed, the trial court considered the language of the statute, giving the terms their usual and ordinary meaning and construing them in context. (See *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190 [in construing a statute, “we start with the statute’s words, assigning them their usual and ordinary meanings, and construing them in context”].) The trial court properly consulted the dictionary, and considered related statutory usages, noting that “the terms *direct* and *indirect costs* have a usual and ordinary meaning that is remarkably consistent.” (See Ed. Code, § 33338, subd. (b)(1) & (2) [defining direct and indirect costs] and Health & Saf. Code, § 25206.1, subd. (b) [defining indirect costs].) Having done so, the trial court concluded, as we do, that section 27366 unambiguously authorizes the County to recover the overhead and operating costs at issue here.

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<sup>11</sup> CPRR purports to find support for an alternative definition of the term “indirect costs” in *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242 (*County of Yolo*), *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945 (*CAPS*), and “other cases” cited in its reply brief. We touch upon *County of Yolo* and *CAPS* elsewhere in this opinion and discuss them at length in *CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 30-33]. For present purposes, we note that neither case defines the term “indirect costs.”

To the extent CPRR contends the trial court should have interpreted section 27366 narrowly pursuant to article I, section 3, subdivision (b)(2) of the California Constitution, we disagree. As we explain in *CPRR v. Yolo*, article I, section 3, subdivision (b)(2) expresses an interpretive rule for cases dealing with the people’s right of access. (See *CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 25-26].) “But this rule of construction does not require the courts to resolve every conceivable textual ambiguity in favor of greater access, no matter how implausible that result in light of all the relevant indicia of statutory meaning.” (*Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1190.) Article I, section 3, subdivision (b)(2) of the California Constitution does not come into play where, as here, the plain language of the statute is clear and unambiguous. (See *Poet, LLC v. California Air Resources Bd.* (2013) 218 Cal.App.4th 681, 750 [article I, section 3, subdivision (b)(2) applies “when a court is confronted with resolving a statutory ambiguity related to the public’s access to information”]; see also *Butts v. Board of Trustees of California State University* (2014) 225 Cal.App.4th 825, 838 [“If the plain language of a statute . . . is clear and unambiguous, our task is at an end and there is no need to resort to the canons of construction or extrinsic aids to interpretation”].)

CPRR faults the trial court for failing to give due consideration to the definition of “indirect costs” in the phase one order, which was derived from *North County*. In *North County*, the Court of Appeal for the Fourth Appellate District, Division One, considered the meaning of the phrase “direct costs of duplication,” as used in former section 6257 (repealed by Stats. 1998, ch. 620, § 10, p. 4121), now section 6253 (Stats. 1998, ch. 620, § 5, p. 4120), of the California Public Records Act (PRA). (*North County, supra*, 23 Cal.App.4th at pp. 146-148) The court concluded: “The direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it. ‘Direct cost’ does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted.” (*North County, supra*, at p. 148.) The court’s opinion includes a single reference to the “

‘indirect’ costs of duplication,” but does not define or otherwise describe the term, which does not appear in the PRA in any event. (*Id.* at p. 147 [“Obviously to be excluded from this definition [of direct costs] would be ‘indirect’ costs of duplication, which presumably would cover the types of costs the Department would like to fold into the charge”].)<sup>12</sup>

Borrowing a term from *North County*, the phase one order defined “indirect costs” to mean “ancillary costs” or “costs necessarily associated with the retrieval, inspection, redaction and handling of the document from which the copy is extracted.” (See *North County, supra*, 23 Cal.App.4th at p. 147 [referring to “the ancillary costs of everything government does”]; *id.* at p. 148 [referring to “the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted”].) CPRR urges us to adopt this definition of “indirect costs.” We decline to do so. We note that the trial court’s initial interpretation of section 27366 was based on the view that section 27366 is ambiguous, and should be narrowly construed pursuant to article I, section 3, subdivision (b) of the California Constitution. We do not share this view for the reasons previously discussed. We therefore decline CPRR’s invitation to construe the term “indirect costs” narrowly, as the trial court initially did.

Finally, CPRR faults the trial court for failing to consider section 27366’s legislative history. However, courts need not consult legislative history where, as here, the plain language of the statute is unambiguous. (*Wells v. One2One Learning Foundation, supra*, 39 Cal.4th at p. 1190; see also *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1055 [“Only when the language of a statute is susceptible to more than one reasonable construction is it appropriate to turn to extrinsic aids, including the legislative history of the measure, to ascertain its meaning”].) In any case, as we explain in *CPRR v. Yolo*, the applicable legislative history supports the

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<sup>12</sup> We discuss *North County* at greater length in *CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 21-22].

County's interpretation of section 27366, not CPRR's. (*CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 27-28].)<sup>13</sup>

For the reasons set forth in *CPRR v. Yolo* and above, we reaffirm our conclusion that section 27366 authorizes the County to recover overhead and other operating costs not specifically associated with the production of copies. (*CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 14-28].) Having done so, we now consider CPRR's claims for mandamus and declaratory relief. As before, our interpretation of section 27366 resolves most of CPRR's claims.

3. *Claims for Mandamus Relief*

CPRR asserts three claims for mandamus relief. First, CPRR claims the County violated a "mandatory duty to set fees for copies of recorded documents at rates that did not exceed the amount of the direct and indirect costs allowed by law." Second, CPRR claims the County violated a mandatory duty to "submit the subject fees to the electorate for enactment" under Proposition 26. Third, CPRR claims the Board abused its discretion in setting copy fees. We first review the requirements for a writ of mandate and then consider CPRR's claims for mandamus relief.

a. *Requirements for Writ of Mandate*

"Generally, mandamus is available to compel a public agency's performance or to correct an agency's abuse of discretion when the action being compelled or corrected is ministerial. [Citation.] 'A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act's propriety or

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<sup>13</sup> CPRR has requested that we take judicial notice of prior versions of the statutes and associated legislative history. We grant the request and have reviewed the documents submitted. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1127, fn. 11.)

impropriety, when a given state of facts exists. Discretion . . . is the power conferred on public functionaries to act officially according to the dictates of their own judgment [Citation.]’ [Citations.] Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner. [Citation.]” (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700-701.)

*b. First Cause of Action (Petition for Writ of Mandate for Violation of Mandatory Duty)*

CPRR’s first cause of action alleges the County violated a “mandatory duty to set fees for copies of recorded documents at rates that did not exceed the amount of the direct and indirect costs allowed by law.” CPRR finds support for the existence of such a duty in sections 27360 and 27366.<sup>14</sup> According to CPRR, sections 27360 and 27366 establish a ministerial duty through their use of the word “shall.” We are not persuaded.

We considered and rejected the same argument in *CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 30-31]. We do not repeat our analysis here. We merely reiterate that the word “shall” does not necessarily create a ministerial duty. (*Sonoma AG Art v. Department of Food & Agriculture* (2004) 125 Cal.App.4th 122, 127 [“Even if mandatory language appears in [a] statute creating a duty, the duty is discretionary if the [public entity] must exercise significant discretion to perform the duty”].) “Here, though sections 27360 and 27366 require the Board to charge and set copy fees, the Board must exercise significant discretion in deciding how much to charge.” (*CPRR v. Yolo, supra*, at [p. 31].) Accordingly, we again conclude that sections 27360 and 27366 do not impose a ministerial duty on the County to limit copy fees. (*Ibid.*)

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<sup>14</sup> Section 27360 provides, “For services performed by the recorder’s office, the county recorder shall charge and collect the fees fixed in this article.”

CPRR also suggests that section 54985 imposes a ministerial duty to limit copy fees. However, section 54985 does not apply to “[a]ny fee charged or collected by a county recorder or local registrar for filing, recording, or indexing any document, performing any service, issuing any certificate, *or providing a copy of any document* pursuant to [section 27366].” (§ 54985, subd. (c)(7), italics added.) Because section 54985 does not apply to copy fees, the statute cannot support the imposition of a ministerial duty to limit copy fees.

CPRR also finds support for the existence of a ministerial duty in *CAPS* and *County of Yolo*. We need not linger over these authorities, as we have already considered and rejected CPRR’s argument that *CAPS* and *County of Yolo* establish a ministerial duty to limit copy fees. (*CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 31-34].) For present purposes, we note that neither case involves section 27366 or any similar statute, and neither discusses the requirements for mandamus relief. We therefore conclude, again, that *CAPS* and *County of Yolo* are inapposite.

Finally, CPRR finds support for the existence of a ministerial duty in *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493 (*Capistrano*). CPRR’s reliance on *Capistrano* is strained and unhelpful. There, the Court of Appeal for the Fourth District, Division Three, considered a constitutional challenge to tiered water rates under Proposition 218, which “added articles XIII C and XIII D to the California Constitution . . . [and] was intended to close perceived loopholes in the restrictions on property taxes imposed by Proposition 13.” (*Paland v. Brooktrails Township Community Services Dist. Bd. of Directors* (2009) 179 Cal.App.4th 1358, 1365.) CPRR makes no effort to compare the tiered water rates in *Capistrano* with the copy fees at issue here, and does not explain how *Capistrano* supports the existence of a ministerial duty to limit fees. We conclude that *Capistrano* is inapposite to the question before us. We therefore reaffirm our conclusion that neither section 27366 nor any of the other cited authorities establish a ministerial duty to limit copy fees. (*CPRR v. Yolo*,

*supra*, \_\_ Cal.App.4th at [p. 34].) Having so concluded, we further conclude that the trial court properly denied the petition for writ of mandate on the first cause of action.

*c. Second Cause of Action (Petition for Writ of Mandate for Violation of Proposition 26)*

CPRR’s second cause of action alleges that (1) the Recorder’s copy fees constitute a “special tax” within the meaning of Proposition 26, and (2) the County violated a mandatory duty to “submit the subject fees to the electorate for enactment” under Proposition 26. We considered and rejected the same argument in *CPRR v. Yolo*, *supra*, \_\_ Cal.App.4th at [pp. 37-39].) For the reasons stated therein, we conclude that, under the circumstances of this case, Proposition 26 does not impose a ministerial duty for which mandamus will lie. (*Ibid.*) Furthermore, as discussed *post*, CPRR has failed to establish that the Recorder’s copy fees constitute a special tax. We therefore conclude that the trial court properly denied the petition for writ of mandate on the second cause of action.

*d. Third Cause of Action (Petition for Writ of Mandate for Abuse of Discretion)*

CPRR’s third cause of action alleges that the Board abused its discretion by (1) relying on section 54985 to increase copy fees, (2) “failing to publish and post the proposed and adopted fee increases,” and (3) failing to review the fee study. We shall address these contentions in reverse order. Before doing so, however, we pause to consider the applicable standard of review.

“Mandamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. Mandamus may issue, however, to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law. [Citations.]” (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) “When reviewing the exercise of discretion, ‘[t]he scope of review is limited, out of deference to the agency’s

authority and presumed expertise.’ ” (*American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534, 547.) “In general, when review is sought by means of ordinary mandate the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support.” (*McGill v. Regents of University of California* (1996) 44 Cal.App.4th 1776, 1786.)

Applying this standard, we conclude that CPRR fails to demonstrate an entitlement to mandamus based on an abuse of discretion. CPRR contends the Board abused its discretion because “[t]here was no ‘substantial, credible and competent evidence’ to support the fee increase.” However, CPRR misstates the applicable standard of review. Contrary to CPRR’s suggestion, we review the Board’s decision making process under the arbitrary and capricious standard, not the substantial evidence standard. “It is worth noting that ‘the question whether agency action is “entirely lacking in evidentiary support” is not the same as a substantial evidence test.’ [Citations.] The latter standard is generally used in reviewing administrative adjudications under Code of Civil Procedure section 1094.5. [Citations.] The arbitrary and capricious standard of review employed under Code of Civil Procedure section 1085 is more deferential to agency decision making than the substantial evidence standard.” (*American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 461.)

We cannot conclude, on the record before us, that the Board’s decision to increase copy fees was “entirely lacking in evidentiary support.” (*McGill v. Regents of University of California, supra*, 44 Cal.App.4th at p. 1786.) The Board received written memoranda regarding the proposed fee increases from the Internal Services Agency and the Recorder’s Office. The memorandum from the Recorder’s Office specifically advised that, “The Auditor-Controller Division of the Department of Finance has reviewed the proposed fees and approved the methodology used to determine that the fees appropriately include indirect cost rates and fully capture actual costs.” The Board was also provided with a redlined ordinance and chart indicating current and proposed fees, as

well as a summary of fees charged by other counties. Significantly, many of the proposed fees, including the challenged copy fees, are the same as the then current fees. There is nothing in the record to suggest that the Board acted without evidentiary support in setting copy fees at the rate of \$12.00/\$2.00 in 2008. (Evid. Code, § 664 [“It is presumed that official duty has been regularly performed”].)

Although the Board may not have received or reviewed a copy of the Recorder’s fee study, the Board was informed as to the amounts of the current and proposed fees, the fact that copy fees (and, indeed, most fees) were unchanged from the prior ordinance, the fact that fees were set in amounts necessary to recover the indirect costs of providing services, and the fact that the fee setting methodology had been reviewed and approved by the Department of Finance. The Board was also aware of comparable fees charged by other counties. On this record, we conclude that the Board’s decision to increase fees was not arbitrary, capricious, or entirely lacking in evidentiary support. That CPRR may disagree with the Board’s decision does not establish an abuse of discretion. We therefore reject CPRR’s contention that the Board abused its discretion by failing to consider the fee study.<sup>15</sup>

Next, CPRR suggests that the Board abused its discretion by failing to conform to procedures required by law. Specifically, CPRR contends the Board failed to comply with section 54986, subdivision (b) which provides in pertinent part, “Any action by a board of supervisors to levy a new fee or charge or to approve an increase in an existing

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<sup>15</sup> CPRR also argues that the trial court erroneously relied on Wilson’s declaration to find that the Board did not abuse its discretion. We consider CPRR’s evidentiary objections to Wilson’s declaration below. For present purposes, we note that the trial court appears to have relied on Wilson’s declaration as an aid to understanding the fee study and not, as CPRR suggests, as evidence that the Board considered in setting fees.

fee or charge pursuant to Section 54985 shall be taken only by ordinance.”<sup>16</sup> According to CPRR, the Board failed to comply with section 54986 in increasing fees *in September 2008*. CPRR concedes the Board complied with the statute in increasing fees the following year.

We need not consider the merits, if any, of CPRR’s contention that the Board failed to comply with section 54986 because we conclude the issue is moot. We assume for the sake of argument that the Board failed to comply with section 54986 in September 2008. Even so assuming, CPRR acknowledges that the Board complied with section 54986 in setting fees the following year, thereby demonstrating a “willingness to perform without coercion.” (8 Witkin, Cal. Procedure (5th ed. 2008) Extraordinary Writs, § 83, p. 970.) “If the respondent shows a willingness to perform without coercion, the writ may be denied as unnecessary; and if the respondent shows actual compliance, the proceeding will be dismissed as moot.” (*Ibid.*) Here, CPRR’s own allegations and argument demonstrate that the Board complied with section 54986 in setting the challenged fees. On this record, we conclude that CPRR’s request for mandamus relief must be denied as unnecessary. (See *State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 742 [“No purpose would be served in directing the [respondent] to do what has already been done”].)

CPRR also contends the Board abused its discretion by relying on section 54985 to set fees, rather than section 27366. Although its appellate briefs are far from clear, CPRR apparently contends the challenged copy fees were unauthorized because they were enacted pursuant to the “non-existent authority” of section 54985. Nothing in the

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<sup>16</sup> According to CPRR, “section 54986[, subdivision ](a) provided and provides that ‘an existing fee or charge pursuant to Section 54985 shall be taken only be ordinance’—not by notice to the Board.” The cited language appears in section 549856, subdivision (b), not subdivision (a). (§ 54986, subd. (b).)

record supports CPRR's contention. The only record evidence CPRR offers in support of the contention that the Board improperly relied on section 54985 to set fees is an ordinance, dated November 7, 2006, that cites section 54985 as the source of the Board's authority to increase Recorder's fees *generally*. The ordinance does not cite section 54985 as the source of the Board's authority to increase the Recorder's *copy* fees. The mere mention of section 54985 in an ordinance setting fees for a variety of services offered by the Recorder's Office does not establish that the Board relied on section 54985 to set copy fees. In any case, CPRR does not explain how the 2006 ordinance relates to the challenged copy fees, which were adopted more than two years later, or why the citation to section 54985 shows that the Board exceeded its authority. We therefore reject CPRR's contention that the Board abused its discretion by setting copy fees pursuant to section 54985. The trial court properly denied the petition for writ of mandate on the third cause of action.

#### 4. *Claim for Declaratory Relief*

CPRR's fourth cause of action seeks a declaration of the parties' rights under section 27366. We extensively address the proper interpretation of section 27366 in *CPRR v. Yolo* and do not repeat our analysis here. (See *CPRR v. Yolo, supra*, \_\_\_ Cal.App.4th at [pp. 15-28].) However, CPRR's fourth cause of action also incorporates by reference CPRR's constitutional challenge to the Recorder's copy fees, an argument which, at first blush, we have yet to consider.

CPRR devotes a single sentence of its 50-page opening brief to its contention that the Recorder's copy fees constitute a special tax within the meaning of Proposition 26. According to CPRR: "The trial court rejected [CPRR's] contention that violations of sections 27360, 27366, and 54985[, subdivision ](c)(6), are violations of duty and constitute per se (or ipso facto) violations of [Proposition 26]." (Italics omitted.)

CPRR’s opening brief offers no argument or analysis explaining why the trial court’s conclusion was erroneous. CPRR fails to meet its burden on appeal.

An appellant has the burden to affirmatively show reversible error. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) “Appellate briefs must provide argument and legal authority for the positions taken. ‘When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.’ ” (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) “We are not bound to develop appellants’ arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived.” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

CPRR’s failure to support its constitutional challenge with reasoned argument or authority gives us sufficient grounds on which to affirm the judgment. However, even if we were to reach the merits of CPRR’s constitutional argument, we would reject it.

“Proposition 26, in an effort to curb the perceived problem of a proliferation of regulatory fees imposed by the state without a two-thirds vote of the Legislature or imposed by local governments without the voters’ approval, defined a ‘tax’ to include ‘any levy, charge, or exaction of any kind imposed by’ the state or a local government, with specified exceptions.” (*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1326; see Cal. Const., art. XIIIIC, § 1, subd. (e).) As pertinent here, article XIIIIC, section 1, subdivision (e)(2) of the California Constitution provides that the definition of “tax” does not include “[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”

CPRR’s constitutional challenge, as we understand it, presupposes that a violation of section 27366 establishes a per se violation of Proposition 26. Significantly, CPRR does not contend the County cannot constitutionally recover indirect costs, as we have

interpreted that term. It is therefore unnecessary for us to parse the differences, if any, between “reasonable costs,” as used in Proposition 26 and “direct and indirect costs,” as used in section 27366. We express no opinion on this issue. Instead, we tailor our analysis to the narrow constitutional question raised by CPRR’s appeal; namely, whether the Recorder’s copy fees are per se unreasonable under Proposition 26 because they recover costs CPRR believes to be nonrecoupable under section 27366 and California common law. We observe that CPRR’s constitutional challenge, as framed by CPRR, is simply a variation on the theme that section 27366 and California common law preclude the County from recovering indirect costs that cannot be specifically associated with the production of copies.

We have already considered and rejected CPRR’s contention that the Recorder’s copy fees run afoul of section 27366 and California common law. Having done so, we likewise reject CPRR’s contention that the claimed violation of section 27366 and California common law establishes, ipso facto, a violation of Proposition 26. We therefore conclude, for the reasons previously discussed, both here and in *CPRR v. Yolo*, that CPRR was not entitled to the requested declaratory relief. The trial court properly denied CPRR’s request for declaratory relief.

##### 5. *Other Issues*

Next, CPRR contends the trial court erred in considering the Wilson declaration because (1) Wilson was not employed by the Recorder’s Office in 2009, and therefore lacks personal knowledge as to whether the Board relied on the fee study, and (2) Wilson is not qualified to authenticate or interpret the fee study. We perceive no error.

Preliminarily, we observe that CPRR does not present the claim of error under a separate heading in its brief, as required by California Rules of Court, rule 8.204(a)(1)(B). As a result, we may deem the issue waived or forfeited. (*Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830, fn. 4 [“The failure to

head an argument as required by California Rules of Court, rule [8.204(a)(1)(B)] constitutes a waiver”].) But even assuming the issue was properly presented, CPRR forfeited its objections to the Wilson declaration by failing to object on these grounds in the trial court.

“ ‘It is, of course, “the general rule” ’ . . . ‘ “that questions relating to the admissibility of evidence will not be reviewed on appeal in the absence of a specific and timely objection in the trial court on the ground sought to be urged on appeal.” ’ ’ ” (*People v. Waidla* (2000) 22 Cal.4th 690, 717; see *Flood v. Simpson* (1975) 45 Cal.App.3d 644, 649 [evidence is competent to support judgment absent specific objection below]; see also Evid. Code, § 353 [no basis for reversal absent timely and specific objection in trial court].) Here, though CPRR objected to Wilson’s declaration on multiple grounds (e.g., the best evidence rule), CPRR did not object on any of the grounds now raised on appeal. We therefore conclude that CPRR has forfeited any objection to the Wilson declaration.<sup>17</sup>

Finally, CPRR offers a four page critique of Peter Lauwerys, an independent consultant who allegedly developed a methodology for calculating fees similar to the one used here.<sup>18</sup> We express no opinion on the merits of CPRR’s critique of Lauwerys, as no evidence suggests he was involved in the fee study at issue in this case. Although the methodology used to calculate copy fees in *CPRR v. Yolo* appears similar to the one used here (*CPRR v. Yolo, supra*, \_\_ Cal.App.4th at [pp. 4-6]), CPRR offers no evidence that

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<sup>17</sup> It is not clear whether CPRR objects to the admission of the Marion declaration and another declaration by Donna Allred, Chief Deputy of the Recorder’s Office. To the extent it does, we conclude that any such objection is also forfeited, for the reasons stated in the text. (See *Opdyk v. California Horse Racing Bd., supra*, 34 Cal.App.4th at p. 1830, fn. 4; *People v. Waidla, supra*, 22 Cal.4th at p. 717.)

<sup>18</sup> We take judicial notice of the fact that Lauwerys conducted a fee study in *CPRR v. Yolo, supra*, \_\_ Cal.App.4th at [p. 4].

they are, in fact, the same. Furthermore, CPRR makes no attempt to explain how Lauwerys' professional qualifications are relevant where, as here, the County independently adopted the "productive hour" or "billing rate" methodology. We therefore reject CPRR's challenge to Lauwerys' qualifications as irrelevant.

### III. DISPOSITION

The judgment is affirmed. Respondents County of Sacramento and County Clerk/Recorder Craig A. Kramer shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

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RENNER, J.

We concur:

/S/

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RAYE, P. J.

/S/

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NICHOLSON, J.